

5 APPEAL DECISION - HARESTANE NURSING HOME, 122 HARESTANE ROAD, DUNDEE - ALTERATIONS AND EXTENSION TO NURSING HOME TO PROVIDE 14 ADDITIONAL BEDROOMS AND A DAY CARE UNIT WITH POOL (AN197-2002)

Reference is made to Article VIII(t) of the Minute of meeting of the Development Quality Committee of 29 April 2002 wherein the above proposals were refused planning permission because the Committee considered that the proposals contravened Policy H1 of the adopted Local Plan (overlooking and overshadowing); and offended the Nature Conservation Subject Local Plan (loss of wildlife in the Dighty area which is part of a wildlife corridor). The decision was taken contrary to the recommendations of the Director.

The decision was appealed by the applicant under the provisions of Section 47 and Schedule 4 of the Town and Country Planning (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 8th August, 2002. A copy of the decision letter can be found in the Members' Lounges.

The Reporter considered the determining issues to be whether the proposal is consistent with the provision of the development plan; and in the event of any serious tensions emerging, whether material considerations justify exceptional approval.

The Reporter found that noise issues could be safeguarded by the imposition of conditions and that no detailed professional evidence in relation to traffic related criticisms was before him. Site layout had been adjusted to place the proposed bedroom wing as far as possible from private housing to either side and tree loss could be compensated for by additional planting and this in turn has the potential to overcome some of the perceived overlooking problems. Widow to window distances are comfortably within prescribed limits. Reasonable sunlight and daylight standards to houses to the east will be maintained. Although the reduction of the existing thicket of trees (20m beyond the 15m Dighty wildlife protection corridor) was regrettable, this could be compensated for by appropriately located replacement planting.

Drawing these matters together the Reporter found that "planning officials offered elected members a correct recommendation and a very reasonable response to the various concerns that have been raised. If it had been accepted, the recommendation would have secured a development that raised no tensions with any of the development plan provisions that have been mentioned".

The appeal was **UPHELD with conditions** similar to those which had been recommended in the original Committee report.

The appellant made a claim for expenses from the Council on the grounds that the appeal was entirely avoidable and that the refusal was not based on valid planning reasons, both constituting unreasonable behaviour. In considering the claim, the Reporter considered that although elected members had "clearly misdirected themselves" in relation to the interpretation of Policy H1, the Reporter considered this to be an "honest mistake".

In contrast, the Reporter considered that the Council had acted unreasonably in the application of the second Reason for Refusal. The development was not located within the wildlife corridor and the Council had failed to consider the opportunity for additional tree planting on that part of the site closest to it.

Although he could not be certain that the case would never otherwise come to appeal, the Reporter agreed that the exchanges between parties were extended by the above unreasonable behaviour.

In conclusion the Reporter awarded the appellants 50% expenses. The Auditor of the Court of Session has been remitted to fix the amount payable in respect of the Law Societies Table of Fees.